



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

September 8, 2023

The Honorable Jason Smith
Chair, House Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515

The Honorable Richard Neal
Ranking Member, House Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515

The Honorable David Schweikert
Chair, Subcommittee on Oversight
House Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515

The Honorable Bill Pascrell
Ranking Member, Subcommittee on Oversight
House Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515

Re: Request for Information: Understanding and Examining the Political Activities of Tax-Exempt Organizations under Section 501 of the Internal Revenue Code

Dear Chairman Smith, Ranking Member Neal, Subcommittee Chairman Schweikert, and Subcommittee Ranking Member Pascrell:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully submits this letter in response to the request for information issued on August 14, 2023 regarding the political activities of tax-exempt organizations under Section 501 of the Internal Revenue Code (“Code”). As a nonpartisan, nonprofit organization committed to protecting our political system from corruption and reducing the influence of money in politics, CREW appreciates the opportunity to engage with you on this important issue.

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While the request for information focuses on both section 501(c)(4) social welfare organizations, which are permitted under the IRS's interpretation of the Code to spend money on activities that directly or indirectly influence elections, and section 501(c)(3) charitable organizations, which are prohibited from participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office, this response is focused on political activity by section 501(c)(4) organizations because that is where CREW has the most expertise. For more than a decade, CREW has sought to fight against those who would seek to use – and abuse – section 501(c)(4) organizations to circumvent the disclosure requirements that serve as a cornerstone of the anti-corruption interests in the American campaign finance system.

Since the Supreme Court's 2010 ruling in *Citizens United v. Federal Election Commission* and the subsequent U.S. Court of Appeals for the District of Columbia's ruling in *SpeechNow.org v. Federal Election Commission* altered the legal landscape for political activity by corporations, including certain types of tax-exempt nonprofit organizations, the American political system has been flooded with anonymously-sourced spending.¹ As a result, American voters have often been left in the dark about who is trying to influence their decisions at the ballot box and who may be influencing the decisions of the elected officials who set policies that directly impact their day-to-day lives.

Much of that secret spending has been shielded from public view through the use of section 501(c)(4) organizations that engage in political activity without disclosing who finances their expenditures.

The ability to conduct unlimited independent campaign spending or to make unlimited contributions to super PACs while avoiding donor disclosure transformed these types of tax-exempt groups into a favorite vehicle for individuals and organizations that want to impact elections without facing public scrutiny or accountability. For these same reasons, as the Department of Justice recently described during the sentencing of former Ohio House Speaker Larry Householder following his conviction on federal racketeering charges that centered on his acceptance of tens of millions from an energy company into a section 501(c)(4) organization he controlled, “a 501(c)(4) is the perfect vehicle for bribery” because it can receive “unlimited and unreported payments” that can benefit the interests of public officials.²

¹ Karl Evers-Hillstrom, [More money, less transparency: A decade under Citizens United](https://www.opensecrets.org/news/reports/a-decade-under-citizens-united), *OpenSecrets*, Jan. 14, 2020, <https://www.opensecrets.org/news/reports/a-decade-under-citizens-united>; Anna Massoglia and Karl Evers-Hillstrom, ['Dark money' topped \\$1 billion in 2020, largely boosting Democrats](https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/), *OpenSecrets*, Mar. 17, 2021, <https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/>.

² Press Release, United States Attorney's Office, Southern District of Ohio, Former Ohio House Speaker sentenced to 20 years in prison for leading racketeering conspiracy involving \$60 million in bribes, June 29, 2023, <https://www.justice.gov/usao-sdoh/pr/former-ohio-house-speaker-sentenced-20-years-prison-leading-racketeering-conspiracy>; Government's Sentencing Mem. for Def. Larry Householder at 15,

Political activity is not supposed to be the heart of these organizations' operations. Section 501(c)(4) provides tax-exempt status to organizations "not organized for profit but operated exclusively for the promotion of social welfare."³ IRS regulations interpret the statute to mean a section 501(c)(4) organization must be "primarily engaged in promoting in some way the common good and general welfare of the people of the community."⁴ The regulations further provide that "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office" does not promote social welfare.⁵ The IRS has not formally defined the "primary activity" standard and instead provides that all the "facts and circumstances" are to be taken into account in determining the "primary activity" of a section 501(c)(4) organization.⁶

The current IRS posture is widely understood to mean that a section 501(c)(4) organization may not dedicate more than 50 percent of its expenditures to political activities. Effectively, this allows politically-minded section 501(c)(4) organizations to spend large sums influencing elections as long as they can offset it with other spending, which can often be done through activities such as sham issue ads or grants to other politically-active nonprofits that may still support their political goals, just less explicitly.

Over the years, CREW has filed numerous complaints with the IRS requesting investigations of whether politically-active section 501(c)(4) organizations were operated primarily to influence elections or failed to properly report their political activity to the IRS. Unfortunately, as CREW explained in an April 2022 report, the IRS has done a poor job of enforcing the law related to political activity by section 501(c)(4)s.⁷

According to a 2020 Government Accountability Office report, between 2010 and 2017, the IRS conducted and closed 226 examinations related to tax-exempt organizations' failures to comply with the rules on political campaign activity.⁸ But only 14 of those examinations involved section 501(c)(4) organizations, despite the immense increase in political activity by these organizations during the same time period.⁹ For much of the time since *Citizens*

United States v. Larry Householder, No. 1:20-cr-00077-TSB (S.D. Ohio. Jun. 22, 2023), ECF No. 278, <https://www.documentcloud.org/documents/23857046-larry-householder-sentencing-memo>.

³ 26 U.S.C. § 501(c)(4).

⁴ Treas. Reg. § 1.501(c)(4)-1(a)(2)(i). As CREW has long noted, by allowing section 501(c)(4) organizations to be only "primarily" engaged in social welfare, the regulation misinterprets the plain meaning of the word "exclusively" in the statute.

⁵ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

⁶ Rev. Rul. 68-45, 1968-1 C.B. 259.

⁷ Matt Corley and Adam Rappaport, [The IRS is not enforcing the law on political nonprofit disclosure violations](https://www.citizensforethics.org/reports-investigations/crew-reports/the-irs-is-not-enforcing-the-law-on-political-nonprofit-disclosure-violations/), *Citizens for Responsibility and Ethics in Washington*, Apr. 28, 2022, <https://www.citizensforethics.org/reports-investigations/crew-reports/the-irs-is-not-enforcing-the-law-on-political-nonprofit-disclosure-violations/>.

⁸ U.S. Government Accountability Office, Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives (Feb. 2020), <https://www.gao.gov/assets/710/705927.pdf>.

⁹ *Id.*; See also <https://www.opensecrets.org/outside-spending/dark-money-groups/summary>.

United, the IRS did not revoke any section 501(c)(4) group's tax-exempt status for violating the law's limits on their political spending.¹⁰

The sharp rise in political activity unleashed by *Citizens United* combined with the IRS's lax enforcement has led some observers to believe that the IRS has given up on this part of its job. While there are certainly legislative and regulatory changes that could help address concerns about the exploitation of loopholes to use tax-exempt organizations to influence American elections without disclosing funding sources, more vigorous enforcement by the IRS of the current rules related to political activity by nonprofit organizations is also essential.

CREW Responses

CREW offers the following responses to a number of the questions posed in the request for information.

1. Would it be helpful to 501(c)(3) and 501(c)(4) organizations for the Internal Revenue Service (IRS) to issue updated guidance on how to define “political campaign intervention” and the extent to which 501(c)(4) organizations can engage in “political campaign intervention” be helpful to 501(c)(3) and 501(c)(4) organizations? If yes, why?

CREW Response: Updated guidance on how to define “political campaign intervention” and the extent to which section 501(c)(4) organizations can engage in “political campaign intervention” would certainly be helpful. As noted above, the IRS has not clearly defined the “primary activity” standard and instead practitioners follow an informal 50 percent standard that appears to be easily gamed. Considering the discrepancy between the IRS's regulations and the law, which requires that section 501(c)(4) organizations operate “exclusively” for non-political purposes, the currently effective standard is overly permissive. To secure the tax benefits associated with section 501(c)(4) status, nonprofits should be obligated to spend a greater percentage of their budget on social welfare activities, which do not include political activities, than the IRS currently requires. If there is a specific threshold, it should be well below 50 percent, and the law or rules should also specify what activities are considered political, so that the IRS can effectively enforce the law and practitioners can confidently abide by it.

Currently, however, the IRS cannot act on its own to issue further guidance related to political activity by section 501(c)(4) organizations. Since 2015, a budget rider has prohibited the IRS from using funds “to issue, revise, or finalize any regulation, revenue ruling, or other guidance ... to determine whether a [501(c)(4)] organization is operated exclusively for the

¹⁰ Maya Miller, [How the IRS Gave Up Fighting Political Dark Money Groups](https://www.propublica.org/article/irs-political-dark-money-groups-501c4-tax-regulation), *ProPublica*, Apr. 18, 2019, <https://www.propublica.org/article/irs-political-dark-money-groups-501c4-tax-regulation>.

promotion of social welfare.” Congress should remove this rider and allow the IRS to clarify the rules for all stakeholders.

2. Does the IRS’s current guidance on the definition of “political campaign intervention” properly account for new forms of political advocacy? If not, what should be included in updated guidance from the IRS to account for forms of political advocacy that are currently not covered?

CREW Response: With its “facts and circumstances” approach, the IRS is able to account for a broader swath of political advocacy than campaign finance regulators like the Federal Election Commission (“FEC”). For instance, the IRS considers factors beyond whether express advocacy language like “vote for” or “elect” is used when it determines whether particular communications constitute political campaign intervention. In Revenue Ruling 2007-41, the IRS promulgated guidance on the distinction between issue advocacy and political campaign intervention. The IRS takes into consideration all the facts and circumstances of a particular communication and identified the key factors as: (1) whether the statement identifies one or more candidates; (2) whether the statement expresses approval or disapproval for a candidate’s position; (3) whether the statement is delivered close to an election; (4) whether the statement makes reference to voting or an election; (5) whether the issue addressed has been raised as an issue distinguishing candidates for an office; (6) whether the communication is part of an ongoing series of communications by the organization on the issue that are made independent of the timing of any election; and (7) whether the timing of the communication is related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder running in an election.

But, as a practical matter, the failure of campaign finance law to keep up to date with new forms of political advocacy has created loopholes that politically-active tax-exempt organizations can and do exploit to minimize the activities they report to the IRS as direct or indirect campaign intervention. In particular, under federal campaign finance law, spending on paid ads that mention federal political candidates by name, even if they don’t expressly advocate for their election or defeat, must be reported if they are made within 60 days of a general election and are targeted at relevant voters.¹¹ Under the law though, groups that spend more than \$10,000 a year to make and run these “electioneering communications” ads are only required to report the spending to the FEC if the ads are run on broadcast television or radio, cable, or via a satellite system. Newspaper, billboard, and, importantly, online ads are not covered by the law. As a result, if the same exact paid ad ran during both the broadcast of a TV show and a stream of it on a service like Hulu, only the former would trigger reporting as an electioneering communication.

¹¹ Making electioneering communications, Federal Election Commission, <https://www.fec.gov/help-candidates-and-committees/other-filers/making-electioneering-communications/>.

The digital loophole represents a huge gap in the FEC's disclosure requirements as spending on digital political ads has exploded in recent years, totalling \$1.6 billion in the 2020 cycle.¹² Even though the specific types of media covered by the definition of an electioneering communication should not affect the IRS's assessment of what qualifies as political campaign intervention, the fact that spending on digital ads that would otherwise meet the definition is not required to be publicly reported to the FEC makes it easier for tax-exempt organizations to avoid scrutiny if they do not report the expenditures as election-oriented on their tax returns.

This can and does happen. For instance, in 2014, several nonprofits affiliated with the political network associated with Charles and the late David Koch announced digital ad campaigns targeting candidates during the electioneering communications window that went unreported to the FEC and were later not represented on their tax returns as political campaign intervention.¹³ Similarly, as described in a complaint CREW filed with the IRS, in 2018, a nonprofit called Coalition for a Safe and Secure America spent more than \$200,000 on Facebook ads in the days leading up to the election targeting state and federal candidates in at least four states, including more than \$168,000 on Facebook ads either criticizing then-Missouri Attorney General Josh Hawley (R), the Republican candidate for U.S. Senate, or promoting the independent candidate running in the race.¹⁴ None of the ads were reported to the FEC as electioneering communications and Coalition for a Safe and Secure America told the IRS that it did not engage in any "direct or indirect political campaign activities on behalf of or in opposition to candidates for public office" and failed to file a Schedule C with its 2018 Form 990 informational tax return.¹⁵

There are legislative vehicles currently available to close the digital electioneering communications loophole. The bipartisan Honest Ads Act, for instance, would expand the law to include paid Internet or digital communications.¹⁶ The Honest Ads Act was also incorporated into the Freedom to Vote Act.¹⁷

¹² Howard Homonoff, [2020 Political Ad Spending Exploded: Did It Work?](https://www.forbes.com/sites/howardhomonoff/2020/12/08/2020-political-ad-spending-exploded-did-it-work/?sh=6bb0060b3ce0), *Forbes*, Dec. 8, 2020, <https://www.forbes.com/sites/howardhomonoff/2020/12/08/2020-political-ad-spending-exploded-did-it-work/?sh=6bb0060b3ce0>.

¹³ Matt Corley, [Koch-backed vets group exploits FEC loophole with undisclosed digital ads](https://www.citizensforethics.org/reports-investigations/crew-investigations/koch-backed-vets-group-exploits-fec-loophole-undisclosed-digital-ads/), *Citizens for Responsibility and Ethics in Washington*, Oct. 11, 2016, <https://www.citizensforethics.org/reports-investigations/crew-investigations/koch-backed-vets-group-exploits-fec-loophole-undisclosed-digital-ads/>.

¹⁴ Letter from Noah Bookbinder and Matt Corley to The Honorable Charles P. Rettig, May 11, 2021, <https://www.citizensforethics.org/wp-content/uploads/2021/05/2021-5-11-Coalition-for-a-Safe-Secure-America.pdf>.

¹⁵ *Id.*; Coalition for a Safe Secure America, 2018 Form 990, https://apps.irs.gov/pub/epostcard/cor/822980298_201812_9900_2020061617191749.pdf.

¹⁶ Text - H.R.2599 - 118th Congress (2023-2024): Honest Ads Act, H.R.2599, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/2599/text>.

¹⁷ H.R.11 - 118th Congress (2023-2024): Freedom to Vote Act, H.R.11, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/11>.

3. Are there any tax-exempt organizations whose voter education or registration activities you suspect might have had the effect of favoring a candidate or group of candidates which would constitute prohibited participation or intervention? If yes, please describe those activities?

CREW Response: Though not “prohibited participation” in the context of spending by section 501(c)(4) organizations, activities that are often framed as “voter” or “issue” education are commonly utilized by politically-minded organizations to impact political outcomes without reporting the activity to the FEC or IRS as political. This is perhaps best illustrated by the ad spending of four section 501(c)(4) nonprofits that have close ties to the Democratic and Republican leadership in both the House and Senate. As *OpenSecrets* reported regarding the 2022 election, the four groups – One Nation, which is aligned with Senate Republicans; Majority Forward, which is aligned with Senate Democrats; the American Action Network, which is aligned with House Republicans; and House Majority Forward, which is aligned with House Democrats – spent \$142 million on TV and online ads boosting or attacking candidates that was not reported to the FEC.¹⁸ By only distributing so-called “issue” ads that focused on 2022 candidates without explicitly calling for their election or defeat and were not broadcast very close to an election, the four groups avoided reporting the ad spending to the FEC and are unlikely to report the ad spending as political activity when they file their Form 990s covering the relevant time periods.

4. Are there changes to Form 990 – which is used by tax-exempt organizations to file their tax returns– that would help clarify how contributions are being used by 501(c) organizations? Especially regarding contributions that are used to fund political activities by 501(c)(4) organizations or nonpartisan voter education activities that 501(c)(3) organizations are allowed to engage in such as voter registration activities, public forums, and publishing voter education guides?

CREW Response: There are many potential changes to Form 990 and its related filing requirements that could clarify how contributions are being used by 501(c) organizations and would, importantly, empower the IRS, the public, and other relevant stakeholders to better assess the political activity that tax-exempt organizations engage in.

Here are a few examples:

- Part VII, Section B of the full Form 990 requires tax-exempt organizations to list their “five highest compensated independent contractors that received more than \$100,000 of compensation from the organization,” including the name and business

¹⁸ Anna Massoglia, [‘Dark money’ groups aligned with party leadership steer hundreds of millions of dollars into 2022 federal elections](https://www.opensecrets.org/news/2022/11/dark-money-groups-aligned-with-party-leadership-steer-hundreds-of-millions-of-dollars-2022-federal-elections/), *OpenSecrets*, Nov. 4, 2022, <https://www.opensecrets.org/news/2022/11/dark-money-groups-aligned-with-party-leadership-steer-hundreds-of-millions-of-dollars-2022-federal-elections/>.

address of the contractor, a description of the services, and the amount of compensation paid. Particularly with electronic filing of Form 990s, this question should not be arbitrarily limited to just the top five highest compensated independent contractors. Some politically-active tax-exempt organizations report on Part VII, Section B, Line 2 that they had many more than 5 independent contractors who received more than \$100,000 in compensation. For instance, One Nation, the nonprofit group aligned with Senate Republican Leader Mitch McConnell (R-KY), reported on its 2020 Form 990 that it had 26 independent contractors who received more than \$100,000 in compensation.¹⁹ Additional disclosure about highly paid independent contractors would provide more information on how funds are being utilized and could offer insight into whether they may be going towards political activity or for the personal benefit of the organization's executives.

- On Schedule C, where tax-exempt organizations are required to report their political campaign and lobbying activities, groups could be required to disclose whether the political activity was reported to any campaign finance regulatory bodies such as the FEC or its state-level equivalents. If the answer is yes, the organizations could be required to name the specific regulators and to list any unique identifiers, such as an FEC Identification Number, that it utilized in the reporting. This would allow the IRS to more easily check an organization's representations about its political activity and to identify whether any political activity that was reported to a campaign finance regulator was not also reported to the IRS. CREW has previously identified numerous examples of section 501(c)(4) organizations that disclosed their political spending to the FEC or other government agencies, but told the IRS under penalty of perjury in their tax returns that they did not engage in any political activity or misrepresented the amount they spent.²⁰
- As noted above, a common tactic for tax-exempt organizations to impact elections without reporting it to the IRS as political activity is to pay for ads that target candidates for office while avoiding express advocacy language. One way to address this issue could be to add a line item to either Schedule C or Part IX, Statement of Functional Expenses, that would require organizations to report the total amounts spent during the relevant tax year on mass communications that name or refer to candidates for office. Elements of the definition of "electioneering communication" in federal campaign finance law could be instructive for defining what types of communications would be captured on such a line item, though it should not be limited to paid communications distributed via broadcast radio or television, cable, or satellite television, and should at least include online and digital ads.

¹⁹ One Nation, 2020 Form 990, Part VII, Section B, Line 2, <https://www.documentcloud.org/documents/21113484-one-nation-2020>; Anna Massoglia, [Senate GOP 'dark money' group passing millions to super PAC, avoiding disclosure](#), *OpenSecrets*, Oct. 21, 2020, <https://www.opensecrets.org/news/2020/10/senate-gop-dark-money/>.

²⁰ Corley and Rappaport, *Citizens for Responsibility and Ethics in Washington*, Apr. 28, 2022.

- One challenge to identifying potential violations of campaign finance law by tax-exempt organizations, such as failing to register and report as a political committee, is the significant time lag between when election spending occurs and when nonprofit organizations provide details about their finances in their Form 990 informational returns. For example, section 501(c)(4) organizations that spent money seeking to influence the 2022 elections, if they follow the calendar year for their tax year, are not required to file the Form 990 until mid-May 2023.²¹ With the allowed extensions, which are very commonly utilized, the returns are not due until mid-November 2023, a year after the last of the political activity is likely to have occurred.²² By that time, the election is well in the past and public interest has likely moved on, lowering the chances that potential violations related to a tax-exempt organization's primary activity (or "major purpose" from a federal campaign finance perspective), which could only be adequately assessed once the nonprofit's total spending for the relevant year is reported, are identified. One potential remedy for this time lag would be to institute some kind of trigger requiring earlier filing of nonprofit tax returns for organizations that report political activity over a certain, reasonable threshold on Schedule C. Any politically-active nonprofit that triggers such early reporting could also be required to share a copy of the early return with the relevant campaign finance regulatory bodies.
- The collection of additional information about grants to other domestic organizations, which is reported on Schedule I, Part II, could also help clarify how contributions are being used by 501(c) organizations. Currently, Schedule I requires the reporting of payments to domestic organizations or domestic governments that received more than \$5,000 aggregate of grants or assistance from the organization during the tax year.²³ Despite the surface appearance of Schedule I as a list of individual grants provided by the reporting organization, the "amount of cash grant" column actually captures "the total dollar amount of cash grants to each recipient organization or entity for the tax year," meaning that multiple grants may be aggregated into a single line item.²⁴ Requiring grants to be reported individually along with the specific date on which the grants were distributed could provide particular insight into whether grants to other tax-exempt organizations are funding the recipient organization's own political activity. These additional details could also help identify potential conduit contribution schemes that involve transfers between multiple entities as a way to further obscure the true source of funds used to make political contributions.

²¹ Return Due Dates for Exempt Organizations: Annual Return, Internal Revenue Service, <https://www.irs.gov/charities-non-profits/return-due-dates-for-exempt-organizations-annual-return>.

²² *Id.*

²³ Schedule I, Form 990, <https://www.irs.gov/pub/irs-pdf/f990si.pdf>.

²⁴ *Id.*, Specific Instructions, Part II. Grants and Other Assistance to Domestic Organizations and Domestic Governments, Column (d).

- Though not a change to Form 990 itself, the public's ability to both understand and scrutinize tax-exempt organizations would be improved if the IRS published more timely, complete, machine-readable nonprofit data. While the IRS has a search that includes some information on some groups, it has no universal search for public Form 990 tax returns, Form 1023 and 1024 application materials, and tax-exempt determination letters, leaving the public and accountability groups to try to cobble together what they can from e-file data and other information. To remedy this, Congress should mandate the creation of a public database for nonprofit data and other public materials, akin to the one the agency already manages for section 527 political groups. In addition, Congress should add Form 8976 notifications to the list of materials to be made public under section 6104 of the tax code.²⁵

5. Should Congress consider policy changes to address money from foreign nationals –who are prohibited from contributing directly to political campaigns, candidates, and super PACs—flowing through 501(c)(3) and 501(c)(4) organizations to influence U.S. elections? If so, what specific policy changes should be considered?

CREW Response: One significant policy change that Congress should consider to help prevent 501(c)(4) organizations from being used as conduits for foreign nationals to make political contributions in the United States is to amend the prohibition of making contributions in the name of another in the Federal Election Campaign Act (FECA) to also prohibit directing, helping or assisting the making of a contribution in the name of another. As noted in the FEC's 2022 Legislative Recommendations, which were adopted on a bipartisan basis on December 15, 2022 and describe addressing this issue as a priority, the FECA has always prohibited contributions in the name of another.²⁶ Specifically, the FECA prohibits making a contribution in the name of another person or knowingly permitting another to use one's name to effect such a contribution as well as knowingly accepting a contribution made by one person in the name of another. In 1989, the FEC amended its regulation to provide that no person shall "[k]nowingly help or assist any person in making a contribution in the name of another."²⁷ According to the FEC, using this provision in enforcement matters allowed the FEC to "reach actors in schemes who initiated, instigated and significantly participated in another person's making of a contribution in the name of another."²⁸ But in 2018, a federal district court struck down the regulations prohibiting such

²⁵ Electronically Submit Your Form 8976, Notice of Intent to Operate Under Section 501(c)(4), Internal Revenue Service, <https://www.irs.gov/charities-non-profits/electronically-submit-your-form-8976-notice-of-intent-to-operate-under-section-501c4>; 26 U.S.C. § 6104.

²⁶ Legislative Recommendations of the Federal Election Commission, 2022, Federal Election Commission, Dec. 15, 2022, <https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf>.

²⁷ 11 C.F.R. § 110.4(b)(1)(iii) (1989); see *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 Fed. Reg. 34,098, 34,104-05 (Aug. 17, 1989).

²⁸ Legislative Recommendations of the Federal Election Commission, 2022, at 13.

help or assistance and issued a nationwide injunction.²⁹ The FEC recently approved an interim final rule implementing the district court's order and removing the prohibition on "knowingly help[ing] or assist[ing] any person in making a contribution in the name of another" from its regulation.³⁰

Congress should follow the FEC's bipartisan recommendation and incorporate the language of the Commission's stricken regulation into FECA, modified to include direct along with help or assist. The FEC noted in its explanation for why it was recommending the legislative fix that the prohibitions related to contributions in the name of another "promote the important and long-recognized governmental interest in fighting corruption and its appearance by ensuring accurate disclosure of the true sources and amounts of campaign contributions and preventing circumvention of FECA's contribution limits and source prohibitions," which would include contributions from foreign nationals.³¹ Notably, the FEC has at least once enforced the law against a section 501(c)(4) organization that acted as a conduit for a super PAC contribution that allowed the true source to remain anonymous, though the political operatives who facilitated the contribution were not accused of wrongdoing by the FEC.³² By expanding the law to prohibit aiding and abetting conduit contributions, political operatives would be disincentivized from facilitating others in making contributions in the name of another, including from prohibited sources like foreign nationals, due to the increased risk that they themselves could face liability and repercussions.

8. Are there additional disclosures by 501(c)(3) and 501(c)(4) organizations engaged in "political campaign intervention" that would help prevent illegal contributions made by foreign nationals to influence U.S. elections?

CREW Response: Additional disclosures by section 501(c) organizations engaged in "political campaign intervention" could help prevent illegal contributions made by foreign nationals to influence U.S. elections by providing information that would empower the IRS and other government agencies to identify when a potentially prohibited contributor has provided funds to a tax-exempt organization that engages in political activity. For instance,

²⁹ See *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1116 (D. Utah 2018).

³⁰ Commission approves interim final rule regarding contributions in the name of another, FEC Record: Regulations, Federal Election Commission, May 25, 2023, <https://www.fec.gov/updates/commission-approves-interim-final-rule-regarding-contributions-in-the-name-of-another/>.

³¹ Legislative Recommendations of the Federal Election Commission, 2022, at 13.

³² CREW complaint results in record post-Citizens United penalty, *Citizens for Responsibility and Ethics in Washington*, Nov. 20, 2017, <https://www.citizensforethics.org/news/press-releases/crew-complaint-results-record-post-citizens-united-penalty/>; Matt Corley, Former Cruz campaign manager was involved in conduit contribution scheme, *Citizens for Responsibility and Ethics in Washington*, Feb. 13, 2018, <https://www.citizensforethics.org/reports-investigations/crew-investigations/former-cruz-campaign-manager-involved-conduit-contribution-scheme/>.

organizations that indicate they have engaged in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office and file a Schedule C could be required to provide additional information about their substantial contributors on Schedule B. In particular, politically-active tax-exempt organizations could be required to indicate for each substantial contributor whether the contributor is otherwise prohibited from making contributions or expenditures in connection with any federal, state, or local election, which would include foreign nationals, and, on the federal level, federal government contractors.³³

Previously, most exempt organizations, including section 501(c)(4) organizations, were required to file information about substantial donors with the IRS on Schedule B of Form 990, including name, address, total contributions amount, and the type of contributions, with the names and addresses prohibited from being disclosed publicly for all organizations but political organizations and private foundations.³⁴ All other information provided to the IRS on the Schedule B, including the total amount of contributions from each contributor, was subject to public disclosure. In 2020, the IRS finalized a regulation removing the requirement for exempt organizations other than political organizations and private foundations to provide the IRS with the names and addresses of substantial contributors on Schedule B.³⁵ The regulation did not, however, remove the requirement to report the amounts of contributions from each substantial contributor, and still requires organizations to maintain the names and addresses of substantial contributors should the IRS have a particular need for the information.³⁶ A reconsideration of the cessation of the requirement that tax-exempt organizations provide the IRS with the name and addresses to the IRS could also provide additional disclosure that may help prevent illegal political contributions made through tax-exempt organizations as additional information reporting to the IRS can be “an inexpensive way to try to stymie illegal activity.”³⁷

9. Are you aware of organizations under Section 501(c) that are tax-exempt but have the true purpose of influencing elections in favor of one political party? If so, please provide a description of how such organizations achieve that goal.

CREW Response: As noted above, CREW has filed numerous complaints with the IRS requesting investigations into tax-exempt organizations that appear to have been operated primarily to influence elections or failed to accurately report their political activity. CREW

³³ Federal Election Commission, Help for Candidates and Committees, Foreign Nationals, <https://www.fec.gov/help-candidates-and-committees/foreign-nationals/>; Federal Election Commission, Help for Candidates and Committees, Federal Government Contractors, <https://www.fec.gov/help-candidates-and-committees/federal-government-contractors/>.

³⁴ Schedule B, Form 990, <https://www.irs.gov/pub/irs-pdf/f990ezb.pdf>; 26 U.S.C. § 6104(b).

³⁵ Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations, 85 Fed. Reg. 31959 (May 28, 2020) (codified at 26 CFR 56) T.D. 9898.

³⁶ *Id.*

³⁷ Philip Hackney, Dark Money Darker? IRS Shatters Collection of Donor Data, 25 Florida Tax Review 140, 144 (2021), https://scholarship.law.pitt.edu/fac_articles/439.

has also filed numerous complaints with the FEC alleging that politically-active tax-exempt organizations had the “major purpose” of influencing federal elections, but failed to register and report as a political committee, or were used to make conduit contributions to super PACs. Some of the organizations were investigated or audited in the wake of CREW complaints and many of them shut down after their political activities drew scrutiny. The following case studies from CREW’s history of complaints illustrate some of the ways that tax-exempt organizations who appear to have the true purpose of influencing elections have achieved their goals:

- Americans for Job Security (AJS): AJS was a section 501(c)(6) organization that was once described by the Alaska Public Offices Commission as having “no purpose other than to cover various money trails all over the country.”³⁸ AJS’s extensive spending on independent expenditures and electioneering communications in 2010 accounted for more than 70 percent of its total spending, meaning it was violating its tax-exempt status by operating with the primary purpose of influencing elections and should have registered with the FEC as a political committee.³⁹ CREW filed IRS and FEC complaints against the group in 2012. Due to confidentiality rules, it is unknown how the IRS responded to the complaint. In the FEC case, AJS argued that its electioneering communications did not count as electoral in the analysis of its major purpose because they did not use express advocacy language, and three commissioners who blocked launching an investigation agreed.⁴⁰ CREW sued the Commission over its failure to enforce the law and, in 2016, the district court agreed that electioneering communications should be included as political activity in the determination of the group’s purpose.⁴¹ After further litigation, the agency pursued enforcement against AJS for failing to register and report as a political committee, eventually entering into a conciliation agreement with the then-defunct group in 2019 that required it to register as a political committee and submit a filing

³⁸ Mike McIntire, Hidden Under Tax Exempt Cloak, Political Dollars Flow, *New York Times*, Sept. 23, 2010, <https://www.nytimes.com/2010/09/24/us/politics/24donate.html>.

³⁹ Meghan Faulkner, Uncovering massive dark money donors, 3 lawsuits later, *Citizens for Responsibility and Ethics in Washington*, Sept. 20, 2019, <https://www.citizensforethics.org/reports-investigations/crew-investigations/ajs-dark-money-donor-s-3-lawsuits-later/>; Complaint, Citizens for Responsibility and Ethics in Washington, In the matter of: Americans for Job Security, Federal Election Commission, Mar. 8, 2012, <https://www.citizensforethics.org/wp-content/uploads/2020/09/AJS-FEC-Complaint-3-8-12.pdf>; Letter from Melanie Sloan to Douglas H. Shulman, Mar. 8, 2012, <https://www.citizensforethics.org/wp-content/uploads/2023/08/AJS-IRS-Complaint-3-8-12.pdf>.

⁴⁰ MUR 6538 (Americans for Job Security et al.), First General Counsel’s Report, May 2, 2013, <https://www.fec.gov/files/legal/murs/6538/14044361705.pdf>. Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen, Jul. 30, 2014, <https://www.fec.gov/files/legal/murs/6538/14044361962.pdf>.

⁴¹ Memorandum Opinion at 23, *Citizens for Responsibility and Ethics in Washington et al. v. Federal Election Commission.*, No. 1:14-cv-01419-CRC (D.D.C. Sept. 19, 2016), ECF No. 52, <http://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2016/09/19161556/Document-52-9-19-16-Court-Mem-Op-on-MSJ.pdf>.

containing its receipts and disbursements from 2010 through 2012.⁴² That disclosure revealed scores of previously secret donors to the group.⁴³ An analysis by CREW of AJS's belated disclosure of its contributors revealed, among other things, that it received \$2.93 million from a construction company during the same time period that AJS spent more than \$2 million that benefited the Senate campaign of a former employee of the company.⁴⁴ As a federal government contractor, the company would have been barred from contributing to AJS if the tax-exempt organization had been registered as a political committee at the time.

- Freedom Vote: Freedom Vote was a section 501(c)(4) organization that, according to reporting by *Politico*, was formed with “the express purpose of raising money to help pay for the type of turnout operations traditionally underwritten” by the Republican National Committee.⁴⁵ CREW first filed an IRS complaint against Freedom Vote in 2016 after the group spent nearly \$175,000 on independent expenditures in a 2014 congressional primary, which accounted for 61 percent of Freedom Vote's total spending in its 2013 tax year.⁴⁶ Two years later, CREW filed a second IRS complaint against Freedom Vote as well as an FEC complaint regarding the group's political activity in the 2016 Ohio U.S. Senate race, which included close to \$2 million contributed to a super PAC and more than \$1 million spent on an ad campaign against the Democratic candidate.⁴⁷ Freedom Vote attempted to avoid violating its tax-exempt status by not treating its spending on the ad, which attacked the candidate for wanting to “bring his job-killing policies to Washington” while flashing an image of the U.S. Capitol, as political activity or an independent expenditure in

⁴² Faulkner, *Citizens for Responsibility and Ethics in Washington*, Sept. 20, 2019; MUR 6538R (Americans for Job Security), Conciliation Agreement, Sept. 9, 2019, <https://www.citizensforethics.org/wp-content/uploads/legacy/2019/09/MUR-6538R-Closing-Letter-to-Complainant-1.pdf>.

⁴³ CREW exposes dark money donors, including Thiel, Devos, and Adelson, *Citizens for Responsibility and Ethics in Washington*, Oct. 25, 2019, <https://www.citizensforethics.org/news/press-releases/crew-exposes-dark-money-donors-including-thiel-devos-and-adelson/>.

⁴⁴ Matt Corley, Hensel Phelps donations to pro-Buck dark money group finally revealed, *Citizens for Responsibility and Ethics in Washington*, Nov. 19, 2019, <https://www.citizensforethics.org/reports-investigations/crew-investigations/hensel-phelps-donations-ken-buck/>.

⁴⁵ Jeanne Cummings, State parties look past RNC for cash, *Politico*, Sept. 3, 2010, <https://www.politico.com/story/2010/09/state-parties-look-past-rnc-for-cash-041733>.

⁴⁶ Letter from Noah Bookbinder to the Honorable John A. Koskinen, Jun. 15, 2016, <https://www.citizensforethics.org/wp-content/uploads/legacy/2017/03/Freedom-Vote-IRS-complaint-6-15-16.pdf>.

⁴⁷ Letter from Noah Bookbinder to the Honorable David J. Kautter, Jun. 8, 2018, <https://www.citizensforethics.org/wp-content/uploads/legacy/2018/06/Freedom-Vote-IRS-complaint-6-8-18.pdf>; Complaint, *Citizens for Responsibility and Ethics in Washington*, In the matter of: Freedom Vote, Inc., et al, Federal Election Commission, Aug. 8, 2018, https://www.fec.gov/files/legal/murs/7465/7465_01.pdf.

reports to the IRS and the FEC.⁴⁸ By not counting the ad spending as political, Freedom Vote was able to claim that it dedicated less than 50 percent of its spending to political activity. Accurately reporting the ad as political activity would have meant political activity accounted for 80 percent of its total spending. FEC investigators found that from 2014 to its termination in 2019, more than 71 percent of the group's spending was dedicated to federal campaign activity, but the agency deadlocked on taking further action due to a disagreement over the applicability of the statute of limitations.⁴⁹ The investigation also revealed that Freedom Vote was audited by the IRS beginning no later than April 2017, resulting in a settlement that apparently bankrupted the organization.⁵⁰ In a further indication of how political activity was central to Freedom Vote's operations but the organization needed to pose as though it wasn't, the FEC's investigators discovered that in August 2016, Freedom Vote received a \$500,000 contribution along with a letter stating, "Please note this is an Anonymous donation for the reelection of Rob Portman."⁵¹ Though Freedom Vote's executive director responded with a letter stating that Freedom Vote, a "501(c)(4)," did not "accept contributions earmarked to support or oppose candidates for public office" as a matter of policy, the organization did not refund the \$500,000 contribution.⁵²

- **Independence and Freedom Network (IFN)**: IFN was a section 501(c)(4) organization that was the parent organization of a nonprofit limited liability company called LZP LLC. In 2018, LZP contributed \$175,000 to a federal super PAC one day after the LLC was incorporated in Ohio.⁵³ Based on this apparent illegal conduit contribution that allowed the true donors to the super PAC to remain anonymous, CREW filed an FEC complaint against LZP.⁵⁴ CREW later amended the complaint to add IFN as a respondent and to address additional contributions LZP had made to the super PAC

⁴⁸ Matt Corley, Dark money group paid IRS penalty and shut down following CREW complaints, *Citizens for Responsibility and Ethics in Washington*, Feb. 7, 2020, <https://www.citizensforethics.org/reports-investigations/crew-investigations/freedom-vote-shut-down-following-crew-complaints/>.

⁴⁹ MUR 7465 (Freedom Vote, Inc.), Statement of Reasons of Chair Shana M. Broussard and Commissioners Steven T. Walther and Ellen L. Weintraub, Dec. 16, 2021, https://www.fec.gov/files/legal/murs/7465/7465_38.pdf; MUR 7465 (Freedom Vote, Inc.), Statement of Reasons of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III, Mar. 7, 2022, https://www.fec.gov/files/legal/murs/7465/7465_40.pdf.

⁵⁰ MUR 7465 (Freedom Vote, Inc.), Notification with General Counsel's Brief to Freedom Vote, Inc., Sept. 20, 2021, https://www.fec.gov/files/legal/murs/7465/7465_27.pdf.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Matt Corley, Russian doll approach to dark money revealed in Ohio group's tax return, *Citizens for Responsibility and Ethics in Washington*, May 29, 2020, <https://www.citizensforethics.org/reports-investigations/crew-investigations/russian-doll-approach-to-dark-money-revealed-lzp-llc/>.

⁵⁴ Complaint, *Citizens for Responsibility and Ethics in Washington*, In the matter of: LZP LLC, et al, Federal Election Commission, Aug. 8, 2018, https://www.fec.gov/files/legal/murs/7464/7464_01.pdf.

after IFN's full 2018 Form 990 tax return⁵⁵ revealed that LZP was a wholly owned subsidiary of IFN.⁵⁶ In May 2021, the FEC voted to launch an investigation into whether the law prohibiting contributions in the name of another had been violated, an action the notoriously dysfunctional agency rarely takes in cases involving allegations that corporate entities were used as conduits to make contributions to super PACs. The FEC's Office of General Counsel ultimately concluded that the evidence indicated "IFN established LZP" and the super PAC "for the specific purpose of transferring funds into LZP to be transferred" to the super PAC "and thereafter did so," resulting in contributions in the name of another.⁵⁷ But the commissioners subsequently deadlocked over finding probable cause to believe both IFN and LZP violated the law and voted against finding probable cause regarding the super PAC.⁵⁸ The investigation, which ultimately traced the origins of the funds IFN contributed via LZP to the super PAC, obtained an email sent by a political operative who set up and managed IFN behind the scenes that suggests it was formed for the purpose of influencing elections. In the email, which was sent to an associate who would essentially serve as a figurehead on IFN's paperwork, the operative asked if the associate was still willing to serve on the board of a section 501(c)(4) organization because they were "establishing some more c4s for the 18 cycle so we can help elect folks to push the Presidents [sic] agenda."⁵⁹

⁵⁵ IFN's Form 990 filings showed apparent efforts to avoid disclosing nearly all of the information required of section 501(c)(4) organizations by the IRS. As CREW described in a June 2019 IRS complaint against IFN, IFN initially filed a Form 990-N (e-Postcard) tax return for its 2017 tax return, which requires minimal reporting and therefore is reserved for tax exempt organizations that normally have gross receipts no greater than \$50,000. But during the same time period covered by the return, May 1, 2017 to April 30, 2018, IFN contributed \$850,000 to a federal super PAC, meaning IFN should have filed a detailed, full Form 990. See Letter from Noah Bookbinder to the Honorable Charles P. Rettig, June 25, 2019, <https://www.citizensforethics.org/wp-content/uploads/legacy/2019/06/Independence-and-Freedom-Network-IRS-Complaint-6-25-19.pdf>. Months after CREW's complaint, IFN filed a Form 990 covering the full calendar year 2018 that accounted for the \$850,000 super PAC contribution on Schedule C. Independence and Freedom Network, 2018 Form 990, Part II and Schedule C, <https://www.documentcloud.org/documents/6773070-Independence-and-Freedom-Network-Inc-2018-990>.

⁵⁶ *Id.*; Amended Complaint, Citizens for Responsibility and Ethics in Washington, In the matter of: LZP LLC, et al, Federal Election Commission, May 29, 2020, https://www.fec.gov/files/legal/murs/7464/7464_10.pdf.

⁵⁷ MUR 7464 (LZP LLC, et al.), Notification with Brief and Supporting Documents to Independence and Freedom Network, Inc., and LZP, LLC, Mar. 1, 2023, https://www.fec.gov/files/legal/murs/7464/7464_67.pdf.

⁵⁸ MUR 7464 (LZP LLC, et al.), Statement of Reasons of Vice Chairman Sean J. Cooksey and Commissioners Allen J. Dickerson and James E. "Trey" Trainor, III, Jul. 7, 2023, https://www.fec.gov/files/legal/murs/7464/7464_90.pdf; Statement of Reasons of Chair Dara Lindenbaum and Commissioner Shana M. Broussard, Jul. 6, 2023, https://www.fec.gov/files/legal/murs/7464/7464_89.pdf.

⁵⁹ MUR 7464 (LZP LLC, et al.), Notification with Brief and Supporting Documents to Independence and Freedom Network, Inc. at 7, and LZP, LLC, Mar. 1, 2023.

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Conclusion

Thanks to the Supreme Court's *Citizens United* decision, tax-exempt organizations that are not required to disclose their contributors, particularly those organized under section 501(c)(4), have played a significantly increased role in the funding of American elections, resulting in serious gaps in the American public's knowledge about who is seeking to influence their votes and their elected leaders. CREW appreciates this opportunity to share ideas for addressing concerns about the rise of dark money in our political system and we would be happy to discuss them further with you or to answer any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Debra Perlin".

Debra Perlin
Policy Director

A handwritten signature in blue ink that reads "Matthew Corley".

Matthew Corley
Chief Investigator